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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,036	01/24/2001	Bea Calo	1991-00301	5934

7590 12/10/2007  
ROBERT GRAY  
CONLEY, ROSE & TAYON, P.C.  
P.O. Box 3267  
Houston, TX 77253-3267

EXAMINER
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KAZIMI, HANI M

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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12/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/769,036		CALO ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Hani Kazimi		3691	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,4,6,7,9,11-13,21,22,24-26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 6, 7, 9, 11-13, 21, 22, 24-26 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on September 20, 2007. The rejections cited are as stated below:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

2. Claims 3, 4, 6, 7, 9, 11, 13, 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. US Pat. No. 5,424,938 A in view of Hawkins et al. US Pat. No. 6,029,146 A, as discussed in the previous office action mailed on June

1, 2006, and the decision by the Board of Patent Appeal and Interferences mailed on July 20, 2007.

3. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. US Pat. No. 5,424,938 A in view of Hawkins et al. US Pat. No. 6,029,146 A, and further in view of Harada et al. US Pat. Pub. No. 2003/0208440 A1, as discussed in the previous office action mailed on June 1, 2006, and the decision by the Board of Patent Appeal and Interferences mailed on July 20, 2007.

4. Claims 21-22 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins et al. US Pat. No. 6,029,146 A in view of Harada et al. US Pat. Pub. No. 2003/0208440 A1, as discussed in the previous office action mailed on June 1, 2006, and the decision by the Board of Patent Appeal and Interferences mailed on July 20, 2007.

#### ***Response to Arguments***

5. Applicant's arguments filed on September 20, 2007 have been fully considered but they are not persuasive. Applicant amended independent claims 3, 6 and 26 by incorporating the previously rejected dependent claims 8 and 30 into independent

claims 3, 6 and 26. The decision by the Board of Patent Appeal and Interferences mailed on July 20, 2007 has affirmed the examiner's rejection of all the claims.

The claims of the present application may be finally rejected in the first Office action, since it's a continuing application, and all claims of the continuing application are drawn to the same invention claimed earlier application. However, since the application was at the Board of Patent Appeal and Interferences, Applicant is given an opportunity to further amend the claims to over come the applied prior art references.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (571) 272-6745. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Hani M. Kazimi', with a stylized flourish at the end.

HANI M. KAZIMI  
PRIMARY EXAMINER

Art Unit 3691

November 13, 2007